UMW INDUSTRIES (1985) SDN. BHD. (FORMERLY KNOWN AS UMW (MALAYSIA) SDN. BHD.

v.

SIN YEW LEE MINING SDN BHD & ANOR.

HIGH COURT MALAYA, KUALA LUMPUR
DATO' SITI NORMA BTE YAAKOB J.
[CIVIL SUIT NO. C5790 OF 1985]
16 AUGUST 1994

PRACTICE & PROCEDURE: Appeal against dismissal of 2nd defendant's application to set aside judgment in default - Whether any defence on the merits - 2nd defendant raising issue that letter of demand unsigned - Letter of demand sent by plaintiff's solicitor and not plaintiff - Letter of demand not containing words "We demand from you" - Whether demand effective - Hire purchase agreement assigned to plaintiff after agreement terminated - Notice of assignment given 2 years after deed of assignment executed - Time when notice of assignment should be given - Validity of the assignment - Section 4(3) Civil Law Act 1956.

This was an appeal by the 2nd defendant against the dismissal of his application to set aside a judgment in default of appearance entered against him on 30 September 1986.

The 2nd defendant was a guarantor on a hire purchase agreement executed by the 1st defendant with Malayan Finance Corporation Bhd who assigned the agreement to the plaintiff on 18 January 1983. Notice of the assignment was given to the 2nd defendant in a letter of demand dated 12 April 1985, that is; 2 years after the deed of assignment was executed. The 2nd defendant contended that the letter of demand was invalid as it was unsigned , sent by the plaintiff's solicitors and not the plaintiff and the words "We demand from you" were not apparent in the letter. The 2nd defendant further contended that the deed of assignment was invalid as it was executed after the hire purchase agreement was terminated on 11 November 1982.

Held:

[1] The letter of demand relied upon by the 2nd defendant was the office copy exhibited to the plaintiff's affidavit and as such it was unsigned. As the original served copy had not been produced to show that it was unsigned, the Court considered that reliance on an unsigned office copy did not provide the 2nd defendant with a defence.

[2] As the authorised agents of the plaintiff, there was nothing wrong with the solicitors sending the letter of demand on behalf of their clients, the plaintiff.

[3] The fact that the letter of demand did not contain the words "We demand from you" did not make the letter less effective as the letter had to be read and understood in its entirety and the reasonable meaning to be attached to the letter was that if the 2nd defendant failed to pay the sum of RM53,326 within 14 days, legal proceedings would be instituted.

[4] Clause 3(6) of the guarantee contemplated the assignment of the 1st defendant's rights under the hire purchase agreement and the 2nd defendant's liability to meet the payment upon the default of the 1st defendant was in no way discharged by the assignment. However, the provisions of that clause did not take away the statutory requirement that the 2nd defendant had to be served with a written notice of the assignment within a reasonable time. As this took place 2 years after the assignment was executed and 3 years after the hire purchase agreement was terminated the Court considered the inordinate delay provided the 2nd defendant with a defence.

[Appeal allowed with costs].

Legislation referred to:
Civil Law Act 1956, s. 4(3)

For the plaintiff/respondent - P. Pereira; M/s. Skrine & Co.
For the 2nd defendant/appellant - Lim Teik Cheong; M/s. Lim Seong Chun & Co.

JUDGMENT

Siti Norma bte Yaakob J:

In these proceedings, the 2nd defendant is sued on a guarantee dated 15 March 1982, wherein the 2nd defendant guaranteed payment of rentals due from the 1st defendant on a hire purchase agreement, also dated 15 March 1982, executed by the 1st defendant with Malayan Finance Corporation Bhd., who, in turn, assigned the agreement to the plaintiff.

Judgment in default of appearance was entered against the 2nd defendant on 30 September 1986, and in applying to have the judgment set aside, the 2nd defendant relied on the following issues to establish that he has merits on his defence, and these issues are

(1) that the letter of demand dated 12 April 1985, is

(a) unsigned.
(b) sent by the solicitors, not by the plaintiff.
(c) the words "We demand from you" are not apparent in the letter and, as such, is not valid.

(2) that the deed of assignment dated 18 January 1983, is also invalid, as it was executed after the hire purchase agreement was terminated on 11 November 1982, when the machinery, the subject matter of the agreement, was repossessed.

The letter of demand relied upon by the 2nd defendant is the office copy exhibited to the plaintiff's affidavit and, as such, it is unsigned. It is highly inconceivable that the original copy sent to the 2nd defendant was unsigned and it is this original copy that must be relied upon to establish that no proper letter of demand has been given to the 2nd defendant. As the original served copy has not been produced to show that it was unsigned, I consider that reliance on an unsigned office copy does not provide the 2nd defendant with a defence.

The fact that the letter of demand was sent by the plaintiff's solicitors is also a non-issue for, as the authorised agents of the plaintiff, there is nothing wrong with the solicitors sending the letter of demand on behalf of their clients, the plaintiff.

The fact that the letter of demand does not contain the words "We demand from you" does not make the letter less effective as the letter must be read and understood in its entirety and the reasonable meaning to be attached to the letter is that if the 2nd defendant fails to pay the sum of RM53,326 within 14 days, legal proceedings would be instituted as did happen in this case.

It is not disputed that Malayan Finance Corporation Bhd. assigned the hire purchase agreement to the plaintiff on 18 January 1983, after the agreement was terminated on 11 November, 1982. It is also not disputed that notice of the assignment was only made known to the 2nd defendant in the letter of demand dated 12 April 1985, i.e. 2 years after the deed of assignment was executed and 3 years after the agreement was terminated.

An issue was raised as to when such notice should be given to the 2nd defendant. Admittedly, s. 4(3) of the Civil Law Act 1956 does not provide a time frame when such a notice should be given. Being an equitable chose in action, I consider that notice of the assignment should be given within a reasonable time and a time lapse of 2 years can hardly be described as being reasonable.

It is true that clause 3(6) of the guarantee contemplates the assignment of the rights of the 1st defendant under the hire purchase agreement and the 2nd defendant's liability to meet payment upon the default of the 1st defendant is in no way discharged by reason of such an assignment. However, the provisions of that clause did not take away the statutory requirement that the 2nd defendant must be served with a written notice of the assignment within a reasonable time. As this only took place 2 years after the assignment was executed and 3 years after the hire purchase

agreement had been terminated, I consider that the inordinate delay does provide the 2nd defendant with a defence.

The 2nd defendant has also questioned the valuation of the machinery as well as the amount claimed but in view of my finding that there is a defence on the merits on the notice of assignment, I had accordingly allowed with costs the 2nd defendant's appeal against the dismissal of his application to have the judgment in default of appearance set aside.